

REMARKS

Entry and consideration of the foregoing amendments is respectfully requested. Claims 1-29 are currently pending. Claims 1, 5 and 20-29 remain withdrawn as being directed to non-elected inventions. Claims 16-17 remain pending as previously amended and claims 18-19 remain pending as originally presented. Claims 2-4 and 6-15 are currently amended. No new matter has been added by the present amendments. Therefore, claims 2-4 and 6-19 are presently under examination.

Independent claim 15 has been amended to specify that the alfalfa varieties being currently claimed are “*Medicago sativa*” alfalfas; to further clarify the appropriate check varieties against which the claimed varieties are compared; and to more clearly set forth the methods by which the inventors determined the percentage faster recovery and the percentage of erect stems. Claims 2-4 and 6-14 have been amended to delete the word “on average” from each of these claims. Support in the as-filed specification for each of these amendments are set forth below.

As set forth throughout the ‘Background of the Invention’, the present invention is directed towards improved “*Medicago sativa*” alfalfa varieties. Also, based on their genetic pedigrees and as is well known to those skilled in the art of alfalfa breeding and culture, each one of the representative varieties of the present invention (*i.e.*, ‘CW 75046’, ‘CW 83201’, ‘CW 85029’ and ‘CW 95026’) and each of the commercial check varieties (*i.e.*, ‘WinterGold’, ‘HybridForce 400’, ‘WL325HQ’ and ‘WL319HQ’) are all *Medicago sativa* alfalfa varieties.

The description of the commercial varieties as “check” varieties is supported throughout the specification. See, for example, page 14, lines 16-19 (“commercial checks”); the last column of Tables 1-5 on pages 15-16 (“% of check...”) and the headings of Tables 7a-7d (“compared to commercially available check varieties”).

The method used to calculate the percentage faster recovery is set forth at least at page 13, lines 19-25, and throughout Example 1, pages 14-18.

The method used to calculate the percentage of erect stems is set forth at least from page 13, line 26, to page 14, line 15, and throughout Example 2, pages 19-24.

RESPONSE

Claim Rejections – 35 USC § 112, Second Paragraph.

Claims 2-4 and 9-19 are rejected under 35 USC § 112, second paragraph, as allegedly being indefinite for including the phrase “on average about”. Without conceding to the merits of the rejection, Applicants have removed the phrase from each of the claims in order to advance prosecution. Therefore, this rejection is now moot.

Claim Rejections – 35 USC § 112, First Paragraph – Written Description

Claims 2-4 and 9-19 are rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement. More specifically, the Office Action alleges that “[T]he specification does not provide a written description of the claimed invention with regards to its genetic, morphological and/or physiological characteristics.” While stating that the specification provides written descriptions for three exemplary alfalfa varieties of the present invention, the Office Action asserts that these descriptions are somehow “not clear” because the exemplified varieties are synthetics. As explained in some detail at least in Example 5, pages 47-48, it is well known to one skilled in the art of alfalfa breeding that most alfalfa varieties sold commercially in the United States are synthetic varieties with on average 100-300 different parental lines being used to produce each one. The descriptions of the alfalfa lines representative of the present invention clearly fall within the norms of what is expected by one skilled in the art. Therefore, Applicants are at a complete loss to understand why the Examiner finds the description of the exemplary alfalfa varieties of the present invention “not clear”.

More importantly to this rejection, the Examiner asserts that “there is no genetic, morphological and/or physiological background in the specification regarding these parents” of the exemplified alfalfa varieties. Here, applicants respectfully submit that the Examiner completely misses and mischaracterizes the true scope and meaning of the present invention. Applicants have after much research and development for the first time discovered *Medicago sativa* alfalfa varieties with the following common morphological features/characteristics/traits – they exhibit an “8% or greater faster recovery after spring green-up or after harvest” and a “15% or greater more erect stems at late (i.e., 75%) bloom” when compared to certain adapted check varieties grown under the same environmental field conditions. Furthermore, the specified check

varieties (*i.e.*, ‘WinterGold’, ‘Hybri-Force 400’, ‘WL325HQ’ and ‘WL319HQ’) are the best commercially available alfalfa varieties with which to compare the varieties of the present invention. It is a common and accepted practice throughout the plant breeding industry to measure improved morphological and physiological traits based on comparisons with the best commercially available varieties of the same type and growing conditions. There are numerous examples of U.S. patents issued to new varieties of plants that demonstrate the U.S. Patent & Trademark Office fully understands this time-honored tradition and scientific measuring stick commonly used in the plant breeding arts. As Applicants have produced the claimed *Medicago sativa* alfalfa varieties utilizing methods known to persons skilled in the plant breeding field, Applicants submit that the number of lines used to develop the parental clones of the present invention as well as the number of parental clones used to produce the exemplary alfalfa varieties of the present invention are irrelevant to the claimed invention which is based on major improvements in two very important morphological traits (*i.e.*, improved standability and fast recovery). In this regard, Applicants’ claims do recite morphological characteristics of the alfalfa varieties that they intend to encompass.

The Examiner’s reliance upon *Vas-Cath Inc. v. Mahurkar* is misplaced and, in fact, this decision strongly supports Applicants’ position as stated herein. According to M.P.E.P. § 2163.02, this case held that “to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed.” *Id.*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). Clearly, the as-filed specification of the present invention conveys with reasonable clarity to those skilled in the alfalfa breeding arts that, as of the filing date of the present invention, Applicants were in possession of a number of new, representative alfalfa varieties each demonstrating the morphological characteristics as presently claimed. As noted above, the as-filed specification and now the claims (claim 15 as currently amended) set forth the specific steps to select and identify the alfalfa varieties that possess the recited morphological characteristics. These selection and identification steps provide a sufficient written description to measure and calculate the morphological characteristics of heights and erect stems based on a comparison to known and publicly available adapted check alfalfa varieties. Surely one skilled in the art could follow this written guidance and select and identify the alfalfa varieties that are claimed. Furthermore,

Applicants are claiming the invention in exactly the context in which the invention is set forth in the specification – *i.e.*, based on the common morphological features of the new alfalfa varieties.

Next, the Examiner relies upon a specific section of M.P.E.P. § 2163 to support the rejection, reciting “[T]he claimed invention as a whole may not be adequately described where an invention is described solely in terms of a method of its making coupled with its function and there is no described or art-recognized correlation or relationship between the structure of the invention and its function.” Again, the Examiner’s reliance on this support for the rejection is misplaced. The present invention was not and is not being described solely in terms of a method of its making coupled with its function. Applicants have described the structure of the invention and the relationship of that structure, *i.e.*, morphological structure, with at least the following functions:

<u>Structure (morphological)</u>	<u>Function</u>
(1) 8% or greater faster recovery	(1) shortened number of days between harvest, maximum number of harvests, greater net yield per acre, moisture conservation, better weed control, greater forage quality (specification, page 4, lines 11-12); provide for a better season-long distribution of yield (sentence bridging lines 10-11)
(2) greater percentage of plants with 15% or greater erect stems	(2) higher forage yield, less mowing time, improved forage quality (specification, page 4, lines 4-10); less stubble in the field (page 4, lines 11-12); flexible harvest window, management flexibility (page 5, lines 7-10), reduced losses from downed alfalfa (page 11, lines 2-3)

As discussed herein, one skilled in the art of alfalfa breeding and/or alfalfa husbandry would clearly understand the structure of the presently described and claimed invention and the relationship of that structure with its function. For at least these reasons, the Examiner is respectively requested to withdraw the rejection.

Claim Rejections – 35 USC § 112, First Paragraph – Enablement

Next, claims 2-4 and 9-19 are rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the enablement requirement. As understood by Applicants, this rejection generally alleges that undue experimentation would be necessary to practice the invention, invoking the *In re Wands* factors and relying upon the following general assertions as justification for the rejection: (1) the specification fails to provide any guidance regarding the genetic, morphological, and/or physiological characteristics of the parents used in the making of the claimed invention; (2) it would require undue experimentation to select all possible alfalfa plants to determine which, if any, would meet the claim requirements; and, (3) the development of improved alfalfa varieties is unpredictable. As an initial matter, Applicants note that “[T]he examiner’s analysis must consider all of the evidence related to each of these factors, and any conclusion of nonenablement must be based on the evidence as a whole” (MPEP 2164.01(a)), citing *In re Wands* 858 F.2d 737, 740 8 USPQ2d at 1404, 1407). The Examiner’s rejection does not meet this standard. However, Applicants hereby address this rejection according to how we believe the rejection is intended.

First, we respond to these three basic tenets of the Examiner’s rejection:

(1) Applicants note that it is now somewhat irrelevant as to what are the genetic, morphological, and/or physiological characteristics of the original parental lines used to derive the parental clones that constitute the alfalfa varieties now being claimed. Once one skilled in the art has access to the representative alfalfa varieties of the instant invention that person can develop further alfalfa varieties with the claimed morphological characteristics using standard plant breeding protocols. As a result of Applicants’ disclosure to the public via the as-filed specification and the deposited alfalfa varieties, any person skilled in the art of plant breeding can now make and use the claimed invention without undue experimentation.

(2) By using the deposited parental clones that constitute the representative alfalfa varieties of the instant invention in an alfalfa breeding program with other alfalfa clones,

it would not require undue experimentation to develop additional alfalfa varieties with the claimed morphological characteristics. Clearly, the data in the specification show that the parental clones possess the claimed morphological characteristics and a standard breeding program could be used by anyone skilled in the art of plant breeding to develop additional alfalfa varieties with the claimed characteristics. The specification demonstrates that standard plant breeding protocols can be used to develop alfalfa varieties with the claimed traits – that is a point of novelty and non-obviousness of the claimed invention. Until Applicants demonstrated that alfalfa varieties with the claimed traits could be developed using commonly-accepted breeding protocols, no one had been successful doing so. Therefore, one reasonably skilled in the art of plant breeding could make or use the invention utilizing the guidance from the disclosures in the as-filed patent application coupled with information known in the art of plant breeding and with/without the specifically deposited varieties.

(3) While it is a fair thing to say that the development of any specific variety with its complete complement of genetic, morphological, and physiological traits is unpredictable beforehand, it is not unpredictable that one skilled in the art could breed additional alfalfa varieties with the claimed traits by using Applicants' deposited alfalfa lines as starting material for any such breeding program. Applicants' as-filed specification provides a road map for doing just that. The fact that some of the required experimentation (*i.e.*, breeding protocols) may be somewhat complex or time consuming does not make it necessarily undue since one skilled in the art of plant breeding typically engages in such routine experimentation/breeding on a regular if not continuous regular basis.

Next, Applicants will refer to the eight considerations set forth in *Wands* for determining whether or not undue experimentation would be necessary to practice an invention. As will be clearly demonstrated herein, Applicants satisfied each of the factors at the time the application was filed.

The breadth of the claims. All questions of enablement are evaluated against the claimed subject matter. M.P.E.P. § 2164.08. The presently pending claims are directed to a class of *Medicago sativa* alfalfa plants with clearly defined morphological structures (*i.e.*, 8% or greater faster recovery and 15% or more erect stems when compared to appropriate check varieties grown under the same environmental conditions), wherein the procedures for determining those structures in comparison to the check varieties is clearly set forth in the specification and in the

claims. Furthermore, the specification provides a number of exemplary lines that display the claimed morphological structures. See, for example, the following table summarizing some of the experimental data from the as-filed specification using the checks listed in claim 15 as benchmarks by which to evaluate the newly developed alfalfa varieties:

Alfalfa Variety of the Present Invention	Percent Faster Recovery Compared to ‘WinterGold’	Percent More Erect Stems Compared to ‘WL 325HQ’
‘CW 75046’	108% (Table 1; Table 3)	171% (Table 7a)
	112% (Table 4)	222% (Table 7d)
	115% (Table 6a)	227% (Table 7e)
‘CW 83021’	126 % (Table 1)	121% (Table 7a)
	127% (Table 3)	139% (Table 7d)
	129% (Table 4)	202% (Table 7e)
	137% (Table 5)	
	142% (Table 6a)	
‘CW 85029’	127% (Table 1)	121% (Table 7a)
	130% (Table 3)	121% (Table 7d)
	134% (Table 4)	176% (Table 7e)
	142% (Table 6a)	
‘CW 95026’	131% (Table 2)	183% (Table 7a)
	120% (Table 3)	246% (Table 7d)
	111% (Table 4)	297% (Table 7e)
	123% (Table 5)	
	119% (Table 6a)	

When a range is claimed, there must be reasonable enablement of the scope of the range. *AK Steel Corp. v. Sollac*, 344 F.3d 1234, 1244, 68 USPQ2d 1280, 1287 (Fed. Cir. 2003). Here, the claims encompass alfalfa varieties with 8% or greater faster recovery and 15% or more erect stems when compared to appropriate check varieties grown under the same environmental conditions. As shown in the table provided immediately above, Applicants have developed a

number of different alfalfa varieties which clearly meet the claimed ranges for the relevant morphological traits.

The nature of the invention. The present invention is in the field of plant breeding. Plant breeding is an old, well established discipline that has been utilized on a large, commercial scale since at least the 1920's. Seed of four exemplary lines of the instant invention ('CW 75046', 'CW 83021', 'CW 85029' and 'CW 95026') have been deposited with the American Type Culture Collection (ATCC). Starting with Applicants' deposited seed which are representative of the claimed invention and using standard plant breeding procedures as set forth in the specification of the instant invention (see, e.g., pages 46-48), one of ordinary skill in the art of plant breeding could develop additional alfalfa varieties that have the morphological features of the plants claimed in the instant invention. In fact, Applicants were able to unexpectedly demonstrate that they successfully did just that without the aid of Applicants' deposited alfalfa varieties that possess the traits as set forth in the pending claims.

The state of the prior art. As discussed herein and in the as-filed specification, plant breeding is a well-established art with well-known procedures for developing new varieties of plants, including new varieties of alfalfa plants. The instant invention uses these standard plant breeding protocols to develop new varieties of alfalfa. As such, the present invention falls squarely within the state of the prior art of plant breeding and requires no unusual or unexpected skills to accomplish. This is especially true now that Applicants have provided the public with alfalfa varieties that possess the claimed morphological traits and these deposited varieties could be used to develop additional new alfalfa varieties with the claimed traits by using standard plant breeding protocols.

The level of one of ordinary skill. The level of ordinary skill in the plant breeding arts is quite high. As discussed above, plant breeding protocols are well known and well established. Plant breeding has been taught as a college subject for decades and numerous texts exist setting forth plant breeding schemes and protocols in great detail. Applicants provided a comprehensive overview of plant breeding methods as well as citations for numerous texts on plant breeding methodologies throughout the as-filed specification, including articles and chapters specifically directed to alfalfa breeding and to more recent biotechnological advances in plant breeding. See, for example, the following sections in the as-filed application: page 1, line 24 to page 4, line 3; and, page 46, line 1 to page 51, line 8.

The level of predictability in the art. The amount of guidance or direction needed to enable the invention is inversely related to the amount of knowledge in the state of art as well as the predictability in the art. *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970). As discussed above, the knowledge in the state of the art of plant breeding is well known and well established. If one skilled in the art can readily anticipate the effect of a change within the subject matter to which the claimed invention pertains, then there is predictability in the art. M.P.E.P. § 2164.03. Here, Applicants have demonstrated that standard plant breeding protocols could be used to develop new alfalfa varieties having 8% or greater faster recovery and 15% or more erect stems when compared to appropriate check varieties grown under the same environmental conditions. Such alfalfa varieties were unavailable until the present invention despite the long-felt need for them. Using Applicants' deposited alfalfa varieties, one skilled in the art of plant breeding could develop additional alfalfa varieties with the claimed traits by using standard plant breeding protocols. As discussed above, while the entire genetic, morphological, and physiological characteristics of any individual alfalfa variety may be unpredictable, it is predictable that one skilled in the art of plant breeding could develop additional alfalfa varieties with the claimed traits by using standard plant breeding procedures and the guidance provided in the as-filed specification for selecting and identifying alfalfa varieties as compared to adapted check alfalfa varieties that are known and publicly/commercially available.

The Examiner cites Barnes *et al.* and Julier *et al.* as supporting his position that "the development of improved alfalfa varieties is unpredictable." The Barnes *et al.* article cited by the Examiner was published almost three decades ago (*i.e.*, 1977) at a time when alfalfa breeding was just beginning to come into its own. By the time the American Society of Agronomy published Monograph No. 29, 'Alfalfa and Alfalfa Improvement' in 1988, things had already changed. For example, in this 1988 Monograph, Barnes *et al.* (*Highlights in the USA and Canada*, Chapter 1, pages 1-24; copy attached) discuss the many advances being made in alfalfa breeding, stating that "[A]n impressive amount of basic information essential to the future of alfalfa improvement was produced from 1975 to 1985" (page 5). It is certainly not hard to understand that even more gains have been made in the nearly two additional decades between 1985 and the filing of the instant application in 2003. For their study, Julier *et al.* purposely chose to use cultivars that "represent a wide range of genetic variation and different eras of

breeding" (page 365, column 2, Materials and Methods, first paragraph) so that they could optimize within-population variation. Therefore, it is not surprising that they subsequently obtained a fairly high level of within-population variation in the subsequent populations derived from these cultivars. The two publications cited by the Examiner do not detract from the fact that Applicants have demonstrated that alfalfa varieties with the claimed morphological characteristics can be developed using the breeding methods set forth in the as-filed specification. Furthermore, Applicants have deposited seed of four exemplary alfalfa varieties developed using such procedures wherein each of these deposited varieties have the claimed morphological characteristics.

As discussed above, the presently claimed invention is not unpredictable given: (1) the many advances made in alfalfa breeding over the past three decades (as evidenced at least by Barnes *et al*, 1988); (2) the availability of the explicit breeding methodologies as provided in the as-filed specification, wherein those disclosed breeding methods led to the development of alfalfa varieties with the claimed morphological traits originating from several genetically different initial breeding populations; and (3) the deposit of four different alfalfa varieties each of which were demonstrated in the as-filed specification to meet the claimed morphological limitations. Clearly, the instant invention is not unpredictable for at least these three different and compelling reasons.

The amount of direction provided by the inventor. Applicants have provided a great deal of direction in the as-filed specification as to how one skilled in the art could develop the alfalfa varieties of the present invention. The as-filed Examples provide detailed explanations of the breeding protocols used to develop the claimed varieties. Furthermore, Applicants have deposited representative alfalfa varieties which possess the claimed traits and these lines can easily be used to develop additional alfalfa varieties with the claimed traits.

The existence of working examples. The as-filed specification provides numerous, detailed working examples of the present invention. See, Examples 1-3. These examples provide step-by-step explanations of the plant breeding procedures used to develop alfalfa varieties with the claimed traits.

The quantity of experimentation needed to make or use the invention based on the content of the disclosure. “[A]n extended period of experimentation may not be undue if the skilled artisan is given sufficient direction or guidance.” *In re Colianni*, 561 F.2d 220, 224,

195 USPQ 150, 153 (CCPA 1977). Conventional plant breeding schemes involve a number of well-known steps and can require a number of growing seasons to accomplish. This is well known and accepted in the art. The as-filed specification provides sufficient direction and guidance as to how one skilled in the art could develop the alfalfa varieties of the present invention. See, Examples 1-3. Furthermore, Applicants have deposited representative alfalfa varieties of the claimed invention which could be used by one skilled in the art to develop additional alfalfa varieties with the claimed traits using standard plant breeding protocols. For these reasons, the quantity of experimentation needed to be performed by one skilled in the art is customary and expected for a plant breeding invention such as the presently claimed invention. The use of such standard plant breeding procedures is clearly not undue experimentation.

For each and all of the reason set forth above, the presently claimed invention complies with the enablement requirement and the Examiner is therefore respectfully requested to withdraw the rejection.

Claim Rejections – 35 USC § 102(b)

Claims 2-4 and 9-19 are rejected under 35 USC § 102(b) as allegedly being anticipated by Moutray *et al.* (Crop Sci. 23(1): 178-179, 1983). The Examiner asserts that merely because “Moutray *et al.* disclose alfalfa varieties that contain Flemish-type alfalfa” that “[T]he alfalfa varieties disclosed by Moutray would inherently have at least on average” the claimed morphological traits (underlining added). The Examiner relies upon *In re Best* to further allege that “where the prior art product seems to be identical to the claimed product, except that the prior art is silent as to a particularly claimed characteristic or property, then the burden shifts to Applicant to provide evidence that the prior art would neither anticipate nor render obvious the claimed invention.” In response, Applicants herein provide evidence to the Examiner that Moutray *et al.* do not anticipate nor render obvious the claimed alfalfa varieties.

As an initial matter, the prior art product is clearly not “identical” to the presently claimed alfalfa varieties. Merely because a prior art alfalfa line may have somewhat similar genetic material in its background does not mean that the lines themselves developed from such common genetic material have the same morphological characteristics. Many successful plant varieties in any/all crops have at least some similar genetic material in their backgrounds (*e.g.*, many currently available corn hybrids are produced using inbreds with B73 and/or Mo17 in their

genetic backgrounds). The prior art on plant breeding is replete with examples of lines with similar genetic backgrounds and different morphological characteristics – that is the essence of the history and the art of plant breeding.

As stated by the Examiner, Moutray *et al.* disclose alfalfa varieties that contain Flemish-type alfalfa, namely ‘Apollo’ and ‘Olympic’. However, the Examiner’s inference is incorrect that merely because an alfalfa line contains Flemish-types in its background that it would therefore inherently meet the limitations of the presently pending claims.

For example and importantly, the ‘WinterGold’ variety used as a check in the instant application and also referenced in the table above contains a genetic background that is 47% Flemish. See, for example, the first paragraph of the attached description of ‘WinterGold’ copied from the North America Alfalfa Improvement Conference (“NAAIC”) website on 19 June 2006. As clearly demonstrated in the as-filed application and summarized above, ‘WinterGold’ does not have the morphological features of the claimed alfalfa varieties despite the fact that 47% of its genetic background is Flemish, which is 10% or more greater than the percentage of Flemish in the background of the cited ‘Apollo’ (25% maximum) and ‘Olympic’ (37%).

“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’ ” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted).

In the present case, the Examiner has assumed that just because the genetic background of an alfalfa variety includes Flemish material that it therefore inherently possesses the morphological characteristics of the alfalfa varieties of the instant invention because they also happen to have some Flemish material in their genetic backgrounds. Clearly, as here, where the very variety used as a comparison check has a greater proportion of Flemish in its background than the lines cited by the Examiner and that check variety does not have the claimed morphological characteristics, the inherency-based rejection must necessarily fail as being fatally flawed.

There are many other examples of alfalfa lines with 'Flemish' in their genetic pedigree that also do not meet the morphological characteristics of the claimed alfalfa varieties. See, for example, '54V54' (~25% Flemish) in Tables 6a-b and Tables 7a-7b of the specification. The description for Pioneer Hi-Bred Int.'s cultivar '54V54' is attached. At least some of the varieties used to breed '54V54' have Flemish in their background: '5331' (13% of 54V54) = 65% Flemish; 'Apollo' (6% of '54V54') = 25% Flemish; and, '5444' (1% of '54V54') has the variety 'Europe' in its background which also has Flemish in its background. Based on at least this proportion of Flemish in its background, it is estimated that '54V54' is >25% Flemish. See also, '5312' (41% Flemish) in Table 6a of the specification. The NAAIC website description for '5312' is also attached hereto for the Examiner's reference.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Furthermore, "[I]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Applicants have clearly demonstrated that just because a particular alfalfa variety has a Flemish background does not necessarily mean that the variety meets the morphological limitations of the alfalfa varieties claimed in the instant application. Based on the above reasons, the Examiner is respectively requested to withdraw this rejection.

CONCLUSION

The Examiner is invited to contact the undersigned if necessary to advance prosecution of this application.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

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